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REMARKS

As an initial matter, Applicant submits that the previous Office Action should not have been made final. Applicant submits that the statement that was deleted from the Background section clearly pertained to the present invention and was not admitted prior art. Therefore, when
5 this statement was deleted, this would not have necessitated a new rejection. Nevertheless, in order to further prosecution, a Request for Continued Examination is concurrently submitted herewith.

Claims 1-19 were rejected under 35 U.S.C. §103 as being unpatentable over The Admitted Prior Art in view of United States Patent No. 5,897,797 to Drouillard, United States
10 Patent Application Publication No. 2005/0008742 to Griesbach et al. and United States Patent No. 5,165,966 to Adams. Claims 1-12 have been canceled. Reconsideration and withdrawal of this rejection with regard to claims 13-19 is requested.

Applicant admits that it is known to use ink free apparatus, such as a laser, for etching a mark on a foodstuff, in combination with a swabbing station to apply food coloring to the etched
15 mark; this is clearly disclosed in the applicant's prior art patent, United States Patent No. 5,897,797 to Drouillard. Applicant also admits that it is known to use a spray gun to apply food coloring to a foodstuff. However, Applicant strongly disagrees with the Examiner that it is obvious to use a spray gun to apply food coloring to a foodstuff which has been etched with a mark as defined by amended claim 13. The use of a spray gun is a unique way of applying
20 coloring to an etched foodstuff that is not known in the prior art. Only with hindsight after reading the disclosure of the present invention would one of ordinary skill in the art make the combination of the spray gun to apply food coloring to an etched mark on a foodstuff.

Publication No. 2005/0008742 to Griesbach et al. discloses that dye-type food colorants can be sprayed onto the foodstuff using a spray nozzle in a predetermined pattern. Adams discloses a process for painting snow using a spray gun and food coloring. Claim 13 has been amended to specify that the food grade coloring is applied to the mark immediately after or up to 500 milliseconds (ms) after the mark has been etched. Neither Griesbach nor Adams discloses or suggests any timing with regard to the application of the colorants to the foodstuff or snow. This is not a concern in Griesbach or Adams because no etching takes place in Griesbach or Adams.

In the present invention, after the foodstuff is etched, as a result of the physiology of foodstuffs, there is a very small optimal application window, up to 500 milliseconds, for applying the food grade coloring to the etched mark to ensure absorption by the foodstuff. Otherwise, the cauterized abscission layer will be closed or closing and then the food coloring then can be rubbed off or it can sweat off, depending on the type of foodstuff being marked. As a result, the present invention uses a high speed spray gun that applies the food color to a specific area, i.e., the etched mark, very soon after the etching. Neither Griesbach nor Adams has this concern. Even when Griesbach and/or Adams is combined with the other prior art of record, there is no suggestion of providing such a timing for the application of food coloring to a foodstuff.

In addition, with regard to the dependent claims, Applicant submits that these are not known in the prior art and requests citation of art regarding same.

Therefore, Applicant requests reconsideration and withdrawal of the Examiner's rejections. Allowance of the application is requested.

Claims 17 and 18 were amended to avoid a 35 U.S.C. §112 rejection based upon antecedent basis.

Claims 20-25 are newly-presented and are dependent upon claim 13 which Applicant submits is allowable. Entry, consideration and allowance is requested.

A Petition for a One-Month Extension of Time is concurrently submitted herewith to extend the date for response up to and including September 10, 2006.

5 In view of the above, Applicant respectfully submits that the claims of the application are allowable over the rejections of the Examiner. Should the Examiner have any questions regarding this Amendment, the Examiner is invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

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